

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD J. KLEIN III,
Petitioner/Appellant,

vs.

Case No. 1:01-cv-794

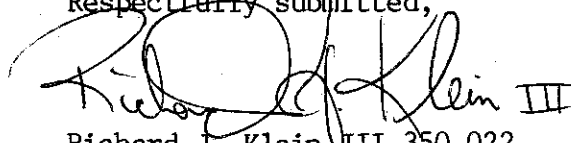
HAROLD CARTER, WARDEN,
Respondent/Appellee.

SECOND MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL AND COA

On June 27, 2005, the United States District Court entered judgment in this habeas corpus action. (Doc. 82-83). On June 28, Appellant formally in writing sent request to the cashier to prepare an "account statement" pursuant to 28 U.S.C. 1915(a)(2), but the authorities have failed to provide this document for the filing of Petitioner's notice of appeal and certificate of appealability. Therefore, Petitioner is being unavoidably prevented from timely adequate filing because Petitioner does not possess the necessary funds on account to pre-pay the filing fee in its entirety. Payment will have to be taken directly from Petitioner's account in order to comply with the filing requirements. All that Petitioner was permitted to obtain was a notary for the affidavit pursuant to 28 U.S.C. 1915(a)(1) and the "certificate" anything else is unavailable to Petitioner at this time; therefore, Petitioner is being unavoidably prevented from pursuing this action by the prison's failure to provide the requisite account statement. (See affidavits attached).

For the foregoing reasons, Petitioner requests an additional (30) days to file notice of appeal and COA.

Respectfully submitted,



Richard J. Klein III 350-022

Petitioner/pros se

R.C.I. P.O. Box 7010

Chillicothe, Ohio 45601

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WEST DIVISION

05 JUL 25 PM 2:02

FILED
JAMES BOWEN
CLERK

CERTIFICATE OF SERVICE

Petitioner certifies that a true copy of the foregoing has been served upon counsel for respondent Assistant Attorney General Diane Mallory at 150 East Gay Street Columbus Ohio 43215 by regular U.S. mail on this 22d day of July, 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard J. Klein III", is written over the typed name.

Richard J. Klein III 350-022

Petitioner/pros se

R.C.I. P.O. Box 7010

Chillicothe, Ohio 45601

AFFIDAVIT

I, Richard J. Klein III 350-022 being duly cautioned and sworn deposes and states the following:

DECLARATION UNDER PENALTY OF PERJURY

(1) I Richard J. Klein declare that I have been unavoidably prevented by prison authorities from obtaining processes necessary to securing this appeal.

(2) On June 28, 2005, which was the day following entry of judgment in my habeas corpus action, I submitted a written formal request to prison authorities requesting the "account statement" required by 28 U.S.C. 1915(a)(2). Thereafter, I have made several verbal requests to prison personal to enquire into my request. I received a variety of unsatisfactory excuses why I was not being provided the requested account statement. To date July 20, 2005, I still have not received or heard anything about the requested account statement.

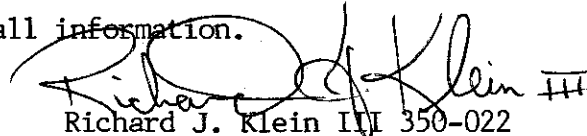
(3) Second, on July 20, 2005, I was unavoidably prevented from obtaining copies of documents necessary to file this appeal (copies of notice of appeal and certificate of appealability) because on that date the library copy machine was broke down and prior to that the library had been closed for one reason or another and I was unable to obtain the necessary copies on a prior date. And, prison authorities refused to provide copies of legal documents by other means which unlawfully abridged and impaired my ability to apply for appeal.

(4) For the past three (3) weeks I have been unavoidably prevented from obtaining Notary Public services in this housing unit 2B, and I have made daily requests to obtain the necessary notary endorsements for filing of my affidavit pursuant to 28 U.S.C. 1915(a)(1). The prison authorities have abridged and impaired my ability to file at an earlier date by not providing timely legal processes.

(5) This document is not notarized because Notary Public services are not being timely provided.

(6) I declare under penalty of perjury that I have submitted above a complete and truthful statement of all information.

Further affiant sayeth neigh.


Richard J. Klein III 350-022

R.C.I. P.O. Box 7010

Chillicothe, Ohio 45601

Sworn and subscribed in my presence on this 21st day, of July, 2005.

Notary service is not timely available.


Witness

AFFIDAVIT

I, Michael R. Poissant 437-989, being duly cautioned and sworn deposes and states the following:

(1) On July 20, 2005, I witnessed the fact that Richard J. Klein 350-022 was unable to obtain copies of documents necessary to the filing of notice of appeal and certificat of appealability because the copier was broke down in the law library and prison authorities refused to provide other means for copying.

(2) I witnessed in the past three weeks there has been no Notary Public services timely available to us here in this housing unit being 2B which is the reason this affidavit is not notarized. I witnessed that Mr. Klein made regular requests for notary services on a daily basis and the requests were denied.

(3) On June 28, 2005, I witnessed Mr. Klein's submission of request for "account statement" conforming to 28 U.S.C. 1915(a)(1) from authorized personal and to date (July 20, 2005) no account statement has been provided by any sources in this prison. Three additional attempts have been made since June 28, 2005, and denied.

DECLARATION UNDER PENALTY OF PERJURY

(4) I declare under penalty of perjury that I have submitted above a complete and truthful statement of all information.

Further affiant sayeth neigh.

Michael R Poissant

Michael R. Poissant 437/1989

R.C.I. P.O. Box 7010

Chillicothe, Ohio 45601

Sworn and subscribed in my presence on this 21st day, of July, 2005.

Notary service is not timely available.

Harold J. Edmunds
Witness

AFFIDAVIT of ORSINO IACOVONE

I, Orsino Iacovone 304-050, being duly cautioned and sworn deposes and states the following:

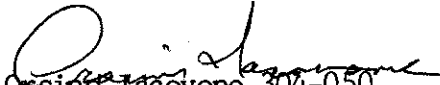
(1) I work in the law section of the Ross Correctional Institutional library, and on July 20, 2005, I witnessed the fact that Richard J. Klein 350-022 was unable to obtain copies of documents necessary to the filing of notice of appeal and certificate of appealability because the copier was broke down in the law library and prison authorities refused to provide other means for copying of legal documents for filing. The library has been closed prior to this for two weeks prior to July 20, 2005, for institutional security emergency; therefore, access to copies of documents were unavailable during that period of time too.

(2) I witnessed in the past three weeks there has been no Notary Public services available to us here in this housing unit being 2B which is the reason this affidavit is not notarized.

DECLARATION UNDER PENALTY OF PERJURY

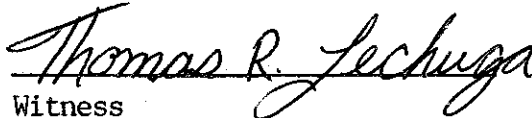
(3) I declare under penalty of perjury that I have submitted above a complete and truthful statement of all information.

Further affiant sayeth neigh.


Orsino Iacovone 304-050

R.C.I. P.O. Box 7010
Chillicothe, Ohio 45601

Sworn and subscribed in my presence on this 21st day, of July, 2005.
Notary services is not timely available.


Witness

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD J. KLEIN III,
Petitioner/Appellant,

vs.

Case No. 1:01-cv-794

HAROLD CARTER, WARDEN,
Respondent/Appellee.

AFFIDAVIT PURSUANT TO 28 U.S.C. 1915(a)(1)

(1) I, Richard J. Klein III 350-0022, being duly cautioned and sworn deposes and states the following:

(2) I, Richard J. Klein III 350-022, declare that I am Petitioner/Appellant in this appeal from Habeas Corpus action pursuant to 28 U.S.C. 2254, judgment entered June 27, 2005, by United States District Court Judge Beckwith (Doc. 82-83 attached). I am incarcerated at Ross Correctional Institution (R.C.I.). I declare that I am unable to prepay the full filing fee or costs under 28 U.S.C. 1915, I declare that I am unable to prepay the full filing fee or the costs of these proceedings and that I am entitled to the relief sought in the appeal of the decision of the habeas corpus petition.

(3) I have a work assignment where I receive \$17.00 per month. In the past (6) months I have received loans for the purpose of purchasing legal materials, (Books, case law copies, typing paper, carbon paper, typewriter ribbon, envelopes, pens and pencils, copies of documents for filing and postage an other necessities for drafting and submitting documents for filings) and I also have other actions pending at this time that require purchasing and use of these materials. I receive no money from any other source. The source of these deposits in this account are loans that I borrow for this purpose which range from \$5.00 to \$125.00.

(4) I do not have any accounts of any kind other than the trust account at R.C.I., and I do not possess certificates of deposit or savings bonds.

(5) I am without assets, including real property, stocks, bonds, securities, or any other financial instruments, automobiles, or anything of


any value to secure attorney fees, filing fees, copies of documents necessary to this appeal and copies of the necessary parts of the record because this exceeds my income which is \$17.00 per month. I cannot secure the total cost of this appeal in a single installment. I can afford \$17.00 per month with an initial payment of \$30.00 which I have paid upon this filing and is over one third of my institutional trust account at this time to initiate this appeal. The loans stated above are not part of any regular income or earnings.

(6) I have not on three (3) prior occasions, while incarcerated or detained in any prison, jail, or other facility brought an action in a court of the United States that was dismissed on the grounds that it was "frivolous," "malicious," or "failed to state a claim upon which relief may be granted." Therefore, pursuant to 28 U.S.C. 1915, I request to proceed in forma pauperis and render my earnings of \$17.00 per month for payment on the fee.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have submitted above a complete statement of all the assets I possess and that all of the information is true and correct. I understand that my signature below authorizes the institution of incarceration to forward from my account to the Clerk of the Court any initial partial filing fee assessed by the Court in the amount of 20 percent of the total of monthly earnings (income) deposited in my account from my work pay only. I can submit a total not to exceed \$17.00 per month. I authorize the institution (R.C.I.) to forward monthly payments of \$17.00 until I have paid the full amount of the filing fee.

Further affiant sayeth naught.

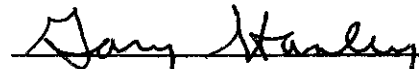


Richard J. Klein III 330-022

R.C.I. P.O. Box 7010

Chillicothe, Ohio 45601

Sworn and subscribed in my presence on this 20 day of July, 2005.



Notary Public

Gary Stanley Notary Public
State Of Ohio

My Term Expires Jan 9, 2006

My commission expires on 1-9-06.

CERTIFICATE

I certify that the applicant named herein has the sum of \$ 110.⁰⁰ on account to his credit at Ross Correctional Institution. I further certify that during the past six months the applicant's average monthly balance was \$ 110.⁰⁰ and the applicant's average monthly deposits were \$ 110.⁰⁰.

To the best of my knowledge applicant does not have a secondary savings account, such as a certificate of deposit or savings bond.

7-20-05

DATE

Gary Stanley

SIGNATURE OF AUTHORIZED OFFICER OR
PERSONNEL

Gary Stanley Notary Public
State Of Ohio
My Term Expires Jan 9, 2006

Richard J. Klein